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NUCLEAR REGULATORY COMMISSION

Docket No. 070-3098; NRC-2011-0081

Notice of Consideration of Approval of Application Regarding Proposed Indirect Transfer of Control of the Construction Authorization for the Mixed Oxide Fuel Fabrication Facility in Aiken, South Carolina

AGENCY: Nuclear Regulatory Commission.

ACTION: Application for approval of an indirect transfer of a construction authorization; opportunity to request a hearing or provide written comments.

DATES: Submit comments by **[INSERT DATE: 30 DAYS FROM DATE OF PUBLICATION]**.

A request for a hearing must be filed by **[INSERT DATE: 20 DAYS FROM DATE OF PUBLICATION]**.

FOR FURTHER INFORMATION CONTACT: David H. Tiktinsky, Sr. Project Manager, Mixed Oxide and Deconversion Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, Washington, D.C.

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SUPPLEMENTARY INFORMATION:**I. Introduction**

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering an application for approval of an indirect transfer of control regarding construction authorization (CA) CAMOX-001. The application, dated August 30, 2012 (ADAMS Accession No. ML12243A498), was supplemented on October 1, 2012 (ADAMS Accession No. ML12276A108). This notice of the application (in section II below) discusses the procedures applicable to submitting requests for a hearing, which are set forth in Title 10 of the *Code of Federal Regulations* (10 CFR), part 2. In accordance with 10 CFR 2.1305(a), written comments on the application may be submitted as an alternative to requesting a hearing, as discussed in section IV below.

The CA was originally issued to Duke Cogema Stone and Webster on March 25, 2005. The CA was modified in 2006, to change the name of the CA holder to Shaw AREVA MOX Services (MOX Services) (ADAMS Accession No. ML063110298). Under the CA, MOX Services is now constructing a Mixed Oxide Fuel Fabrication Facility (MFFF) at the Department of Energy (DOE) Savannah River Site in Aiken, South Carolina. MOX Services has separately requested the NRC's authorization to operate the MFFF, which is currently under review.

In its August 30, 2012, application, MOX Services proposes to make changes in its ownership structure, whereby its ultimate parent corporation ("The Shaw Group, Inc.") would become a wholly-owned subsidiary of Chicago Bridge and Iron Company NV Shaw (CB&I Shaw), based on a purchase transaction agreement dated July 30, 2012 (ADAMS Accession No. ML12269A340). MOX Services would continue to hold the CA, and no physical changes to the MFFF are being proposed. An NRC administrative review, documented in an e-mail sent to

MOX Services on September 11, 2012 (ADAMS Accession No. ML12269A087), found the application acceptable to begin a more detailed technical review.

If the August 30, 2012 application is granted, the CA would be amended for administrative purposes to reflect the indirect transfer. No physical changes would be made at the MFFF site as a result of the indirect transfer. An environmental assessment of the proposed action will not be prepared because such transfers are actions which are categorically excluded from the need to conduct any further environmental review, pursuant to 10 CFR 51.22(c)(21). If the application is granted, an evaluation will document the approval of the indirect transfer of control, and the evaluation would contain the required findings as discussed further below.

Pursuant to 10 CFR 70.36, no license granted under 10 CFR part 70, and no right thereunder to possess or utilize special nuclear material (SNM), shall be transferred, assigned, or in any manner disposed of, directly or indirectly, through transfer of control of any license to any person unless the Commission, after securing full information, finds that the transfer is in accordance with the Atomic Energy Act (AEA), and gives its consent in writing. The CA does not authorize MOX Services to use SNM at the MFFF – it only authorizes MOX Services to construct the MFFF. The CA is thus analogous to a construction permit, and it has served as the mechanism under which the NRC has overseen the MFFF construction activities. Because the term “license”, as defined in 10 CFR 2.4, includes a construction permit, and because the Administrative Procedure Act’s definition of the term “license”, in 5 U.S.C. § 551(8), includes any agency approval or other form of permission, the NRC finds that the 10 CFR 70.36 requirements are applicable here.

The NRC will approve the August 30, 2012, application for the indirect transfer of the CA if it determines that the proposed restructuring and reorganization will not affect the

qualifications of MOX Services to hold the CA, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and any NRC orders that may be applicable.

II. Opportunity to Request a Hearing and Leave to Intervene

Requirements for submitting hearing requests and petitions for leave to intervene are found in 10 CFR 2.309, "Hearing requests, petitions to intervene, requirements for standing, and contentions." Interested persons should consult 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike, Mail Stop: O1-F21, Rockville, MD 20852. You may also call the PDR at 1-800-397-4209 or 301-415-4737. The NRC regulations are also accessible electronically from the NRC Library on the NRC Web site at

<http://www.nrc.gov/reading-rm/doc-collections/cfr/>

Pursuant to 10 CFR 2.309(a), any person whose interest may be affected by this proceeding, and who wishes to participate as a party in the proceeding must file a written request for hearing and petition for leave to intervene. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. Pursuant to 10 CFR 2.309(d), the petition must provide the name, address, and telephone number of the petitioner; and explain the reasons why intervention should be permitted with particular reference to: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order that may be entered in the proceeding on the petitioner's interest.

A request for hearing or petition for leave to intervene must also identify specific contentions that the petitioner seeks to have litigated in the proceeding. As required by 10 CFR

2.309(f), for each contention, the petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. The petitioner also must demonstrate that the issue raised by each contention is within the scope of the proceeding, and is material to the findings that NRC must make to support the granting of a license in response to the application. In addition, the petition must also include a concise statement of the alleged facts or expert opinions which support the position of the petitioner, and on which the petitioner intends to rely at the hearing—together with references to the specific sources and documents on which the petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the Applicant on a material issue of law or fact, including references to specific portions of the August 30 application that the petitioner disputes and the supporting reasons for each dispute; or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure, and the supporting reasons for the petitioner's belief. Each contention must be one that, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC's regulations, policies, and procedures. The Licensing Board will set the time and place for any pre-hearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Petitions for leave to intervene and requests for hearing, and motions for leave to file new or amended contentions that are filed after the deadline in 10 CFR 2.309(b) will not be

entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the following three factors in 10 CFR 2.309(c)(1): (i) the information upon which the filing is based was not previously available; (ii) the information upon which the filing is based is materially different from information previously available; and (iii) the filing has been submitted in a timely fashion based on the availability of the subsequent information

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1) and (2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition must be submitted to the Commission by **[INSERT DATE: 20 DAYS FROM THE DATE OF PUBLICATION OF THIS FEDERAL REGISTER NOTICE]**. The petition must be filed in accordance with the filing instructions in section IV of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that under 2.309(h)(2) State and Federally-recognized Indian tribes do not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a), by making an oral or written statement of his or her position on the issues at any session of the hearing or at any pre-hearing conference, within the limits and conditions fixed by the presiding officer. However, that person may not otherwise participate in the proceeding.

III. Electronic Submission (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities, must be filed in accordance with the NRC E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov, or by telephone at 301-415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web

site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's public Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC's Meta System Help Desk through the "Contact Us" link located on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail at MSHD.Resource@nrc.gov, or by a toll-free call at 1-866-672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at <http://ehd1.nrc.gov/ehd/>, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission

of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

IV. Opportunity to Provide Written Comments

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the CA transfer application, as provided for in 10 CFR 2.1305. The NRC will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this *Federal Register* notice. Comments received after 30 days will be considered if practicable to do so, but only those comments received on or before the due date can be assured consideration.

For further details with respect to this CA transfer application, see the application dated August 30, 2012. Publicly-available records will be accessible electronically from the Agency Wide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, or 301-415-4737 or by e-mail to pdr.resource@nrc.gov.

Dated at Rockville, Maryland this 17th day of October, 2012.

For the Nuclear Regulatory Commission.

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Division of Fuel Cycle Safety
and Safeguards,
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